

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN MICHAEL FARNUM,)
Petitioner,) 2:13-cv-01304-APG-PAL
vs.) **ORDER**
ROBERT LeGRAND , *et al.*,)
Respondents.) /

In this habeas corpus action, the petitioner, John Michael Farnum, has filed a motion seeking clarification of this court's order granting in part respondents' motion to dismiss (ECF No. 32). ECF No. 41. Specifically, Farnum asks the court to explain why, in that order, it did not address the exhaustion status of eleven of his nineteen habeas claims.

As respondents point out in responding to Farnum's motion (ECF No. 42), the court addressed only those claims that the respondents sought to dismiss on exhaustion grounds. The claims that this court identified as unexhausted are as follows:

- (1) appellate counsel provided ineffective assistance by raising a “specious” Eighth Amendment claim on direct appeal;
 - (2) trial counsel was operating under a conflict of interest because trial counsel previously had represented Bob Farnum, petitioner’s father, on charges of sexual offenses;

- 1 (3) trial counsel provided ineffective assistance because he gave specious testimony at
2 the state habeas corpus evidentiary hearing about how much time he spent preparing
for trial;
- 3 (4) trial counsel provided ineffective assistance because trial counsel failed to obtain the
4 medical records of the victim's mother;
- 5 (5) trial counsel failed to use available impeachment evidence against the prosecution's
witnesses; and
- 6 (6) trial counsel provided ineffective assistance because trial counsel did not challenge
7 the allegation that petitioner abused the victim in the house of Bob Farnum,
petitioner's father.

8 ECF No. 32, p. 3-6. The court concluded that respondents' arguments claiming that Farnum failed
9 to exhaust two other claims were without merit. *Id.*

10 Although this court may consider *sua sponte* whether the petition contains unexhausted
11 claims, it is not required to do so. *See Granberry v. Greer*, 481 U.S. 129, 133-34 (1987) (holding that
12 federal court may raise exhaustion *sua sponte* when State inadvertently neglected to raise defense if
13 interests of justice would be served). The respondents' omission of Farnum's remaining claims from
14 their motion to dismiss suggests that they view those claims as exhausted, but Farnum is cautioned
15 that the exhaustion requirement must be expressly waived (28 U.S.C. § 2254(3)). Lastly, this court
16 has no control over which claims Farnum chooses to present to state court now that this proceeding
17 is stayed. That is matter left to his discretion.

18 **IT IS THEREFORE ORDERED** that petitioner's motion for clarification (ECF No. 41) is
19 GRANTED as set forth above.

20 Dated this 13th day of October, 2015.

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24 UNITED STATES DISTRICT JUDGE
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